U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALLEN G. GLOVER and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Pittsburgh, PA

Docket No. 99-141; Submitted on the Record;
Issued June 15, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he developed an emotional condition due to factors of his federal employment.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof to establish that he developed an emotional condition due to factors of his federal employment.

On January 25, 1993 appellant, then a 53-year-old manual clerk, filed a claim for occupational disease, Form CA-2, alleging that he developed an emotional condition as a result of his federal employment. The Office of Workers' Compensation Programs denied appellant's claim on November 2, 1993, finding that he had failed to submit the necessary medical evidence to establish his claim. Appellant requested reconsideration and by decision dated March 3, 1995, the Office affirmed the prior decision on the grounds that appellant had submitted insufficient evidence to warrant modification. Appellant again requested reconsideration and by decision dated June 30, 1997, the Office found the newly submitted evidence insufficient to warrant modification of the prior decision. Appellant submitted his most recent request for reconsideration on August 5, 1998 and in a decision dated September 9, 1998, the Office found that evidence insufficient to warrant modification of the Office's prior decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an

employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.[1]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[2] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[3]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[4] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[5]

In this case, appellant stated that in 1985 he had a great deal of difficulty getting hired by the employing establishment and was repeatedly rejected for the positions applied for on the grounds that he was medically unfit. The Office of Personnel Management eventually found that the employing establishment erred in rejecting appellant's employment applications and, following his filing a grievance, appellant was ultimately awarded back pay and overtime. Appellant stated that shortly after he began work with the employing establishment in 1986, he was assigned to a regular-duty job, even though he was still a part-time employee and that this caused the other more senior workers to become upset and resent him. He asserted that there was a general atmosphere of unrest and that fights would break out between coworkers over who was working hard and who was taking extended breaks or talking too much. Appellant stated that in early 1991 his position at the employing establishment became very stressful as the employees were concerned that proposed automation would result in job losses, everything was confusing and everyone was upset. In addition, during the Christmas holidays, appellant and other workers were required to work mandatory overtime and that this exacerbated his preexisting service-

[1] *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

[2] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[3] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[4] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[5] *Id.*

related anxiety condition, which he has suffered from since 1961.[6] He stated that his problems were compounded when a Mr. Donald Peterson took over as his supervisor. He alleged that Mr. Peterson was very strict and hard to get along with and began walking through the unit threatening workers for no reason and creating chaos. Appellant alleged that on October 13, 1992, Mr. Peterson told appellant and several other workers that they were using their rest bars incorrectly and instructed them how to sit properly at their stations. Appellant asserted that when he attempted to sit in the proper position, his rest bar shifted and he reinjured an old ankle injury, which he incurred while employed outside the federal government as a firefighter. Appellant explained that the following day he showed his supervisor a slip from his physician stating that appellant should be allowed to sit in whatever position was comfortable for him, but that instead of granting him latitude as to his sitting position, the supervisor sent him to work limited duty. Appellant stated that he sought assistance from the Union, which triggered a constant barrage of harassment throughout the end of October 1992 from the employing establishment supervisors, who constantly criticized his sitting posture and asked to see his medical release. Appellant then filed a grievance with the Union, which caused the supervisors to harass him even more. As a result of the mounting anxiety, appellant began missing intermittent days from work in early November 1992, which he asserted caused additional harassment. On January 9, 1993 appellant stopped work completely and has not returned.[7] After he had missed 10 months of work, the employing establishment issued a letter of warning charging him with being absent without leave and on December 17, 1993, appellant was issued a letter of removal.

Regarding appellant's allegations that he felt that his coworkers, at one time, resented his success and that there was a general atmosphere of unrest and fear that proposed automation would lead to job reductions, these alleged incidents lack specificity as to time, date and place and are uncorroborated by supportive evidence from other employees, or other documentation. In addition, disability is not covered where it results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment.[8] With respect to appellant's allegations that his supervisors were strict and hard to get along with, and harassed him by constantly correcting his sitting position, repeatedly asking to see his medical release and in issuing a letter of warning for his being absent without leave, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act.[9] This principle recognizes that a supervisor or manager in general must be

[6] The record contains a February 14, 1984 letter, from Selma Tansy, Executive Director of the Mental Health/Mental Retardation Center, Inc. in Washington, Pennsylvania, who states that appellant first underwent treatment at the Center on January 19, 1981 and that at the time of her letter, appellant carried a diagnosis of anxiety disorder, generalized and paranoid and avoidant personality disorder traits. Ms. Tansey further stated that information supplied to the Center by appellant and the Veterans Administration indicates that appellant was first treated for anxiety while on active duty with the United States Army in 1962.

[7] Appellant filed a separate claim for traumatic injury for the alleged October 13, 1992 reinjury to his ankle and received continuation of pay from January 10 through February 9, 1993. This claim is not contained in the record, although there is a notation by the Office that appellant's ankle claim was eventually denied.

[8] *Lillian Cutler*, *supra* note 1.

[9] *See Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[10] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[11] The Board finds that the record contains no evidence that the employing establishment acted unreasonably in attempting to ensure that appellant sat at his work station in the recommended manner, in asking to see his medical release and in asking appellant to submit the required documentation to support his prolonged absence without leave and that, therefore, there was no error or abuse with respect to these allegations.

The Board further finds, however, that the finding by the Office of Personnel Management that it could not sustain the employing establishment's decision not to hire appellant in 1985, constitutes supporting evidence that the employing establishment erred in this respect. In addition, the employing establishment acknowledged that mandatory overtime was required during the Christmas period. Extra work and increased work load performed by appellant would be considered a compensable factor of employment as this constituted performance of his assigned duties.[12] Therefore, appellant has established the agency's 1985 hiring procedures and the Christmas period overtime as compensable employment factors under the Act.

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the previously identified compensable employment factors.[13] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[14]

In support of his claim, appellant submitted medical reports and treatment notes dating from prior to his employment at the employing establishment. While these reports establish that appellant had a preexisting psychiatric diagnosis, they do not establish that he sustained an emotional condition as a result of his federal employment. The record also contains progress

[10] *See Abe E. Scott*, 45 ECAB 164 (1993).

[11] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[12] *James W. Griffin*, 45 ECAB 774 (1994).

[13] *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[14] *Id.*

notes dated January 11 and 21, February 1 and 2, 1993 and November 1 and 14, 1994, from physicians at the Veterans Administration Medical Center a compensation and pension exam report dated October 7, 1994, from a physician at Department of Veterans Affairs and progress notes from physicians at the Behavioral Medicine Clinic dating from January, March and September 1993. None of these reports, however, contains any opinion from a physician as to the causal relationship, if any, between appellant's diagnosed condition and his employment. The record also contains a June 21, 1993 psychological evaluation report from Dr. Charles H. Goyette, a licensed psychologist, who stated:

> "[Appellant] appears to be suffering from an adjustment disorder reportedly associated with difficulties experienced while working at the post office. There have been increasing anecdotal reports about increased levels of stress associated with post office work. While such an assertion cannot be made with any degree of certainty, it would appear that [appellant] is experiencing similar difficulties as those previously described. [Appellant] apparently suffered from a similar disturbance approximately [20][-]years ago while attending NCO school in Germany, but has an extensive work history with no reported difficulties during his [17][-]year term as a firefighter. Accordingly, while no specific conclusions can be drawn, it would be prudent to recommend against returning to work at the post office."

Dr. Goyette's opinion is both speculative and does not relate appellant's condition to the specific employment factors identified by appellant and accepted by the Office. Therefore, it is not sufficient to meet appellant's burden of proof.[15] Finally, the record contains a June 11, 1998 report from Dr. L. Alan Wright, a Board-certified psychiatrist who examined appellant and concluded:

> "The current diagnosis continues to be [g]eneralized [a]nxiety [d]isorder. His records indicate a pattern of persistent symptoms and poor response to stressful circumstances consistent with this condition. He continues to experience persistent symptoms although he demonstrates minimal objective evidence of that in this office. These symptoms have resulted in restriction of activity and a compromised lifestyle. Because of the lengthy history of this condition and only partial response to treatment, it is my opinion, with a reasonable degree of medical certainty, that he is unable to return to his usual employment at the post office. Information concerning his employment duties and the environment at the post office are currently lacking. However, it is possible to opine, once again with a reasonable degree of medical certainty, that the demands of the workplace such as may have been found at the post office during his employment could have had an adverse effect on his long-standing medical condition."

Dr. Wright's opinion, that work factors which "may" have been present at the employing establishment "could have had an adverse effect" on appellant's psychiatric health, is also too speculative to constitute the type of rationalized medical evidence necessary to establish the

[15] *Alberta S. Williamson*, 47 ECAB 569 (1996).

requisite causal relationship between the accepted employment factors identified here in appellant's diagnosed emotional condition.[16]

As appellant has not submitted a medical report diagnosing a medical condition attributable to the employment factors and explaining how and why the physician believed that appellant's medical condition is causally related to the employment factors, he has failed to meet his burden of proof.

The decision of the Office of Workers' Compensation Programs dated September 9, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 15, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[16] *Id.*